IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION(BAIL) NO. 258 OF 2006

Mr. Peter Cirksena,
German National,
Major, r/o H.No.1523/1,
Piken Chiwar, Anjuna Goa,
Presently lodged at
Mapusa Judicial Lock Up,
Mapusa-Goa. ... Applicant

versus

State
(As represented by the
Office-in-charge,
Calangute Police Station,
Calangute, Goa). ... Respondent

Mr. Arun Bras De Sa, Advocate for the Applicant.

Mr. C. A. Ferreira, Public Prosecutor for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 20TH JULY, 2006.

ORAL ORDER

Heard Mr. Arun Bras De Sa, the learned Counsel on behalf of the applicant and Mr. C. A. Ferreira, the learned Public

Prosecutor on behalf of the respondent.

2. The applicant is accused who has been denied bail by the learned J.M.F.C., Mapusa by Order dated 29-5-2006 and later by the learned Sessions Judge, Panaji by Order dated 5-6-2006.

3. Upon a complaint filed by one Xavier s/o Caitan Francis Rodrigues on or about 27-3-2003 Crime No.79/S/04 came to be registered in Calangute Police Station under Sections 417, 420 and 468 I.P.C. as a result of which the accused was arrested on 27-3-2003 and subsequently released on bail on 29-3-2003 with conditions that the accused would report to the Police Station for 8 days and would furnish his permanent address, which conditions were complied with by the accused.

4. On or about 17-12-2003 the accused was intercepted at Mumbai whilst the accused was trying to leave the country on a Lativian Passport bearing No.830157 and as such was deported to Germany. In the meantime, charge-sheet was filed bearing No.79/S/04 against the accused and it appears that the wife of

the accused who is otherwise a goan was unable to produce the accused when notified and paid the surety amount due under the bond executed by her. The reply filed shows that the accused entered the country on or about 5-2-2006 and this time on an Estonian Passport and a case against the accused is stated to be pending at New Delhi in which he is on bail.

5. A fax message produced alongwith the affidavit in reply filed by the respondent, shows that the accused was intercepted on 17-12-2003 at Mumbai whilst leaving the country on a forged Lativian Passport bearing No. 830157 and, therefore, he was deported to Germany by Flight No.LX-757 on 20-12-2003 from the Air Check Post. This fax message was issued by the FRRO, Mumbai.

6. As against the above background, it is submitted on behalf of the accused that the accused did not jump bail and if at all the accused had to leave the country it was because the accused was deported by the FRRO to Germany. It is further submitted on behalf of the accused that the offences for which the accused stands charged before the learned J.M.F.C., Mapusa

in C.C. No.79/S/04 are punishable with imprisonment for a period not more than 7 years and it is also submitted that an offence under Section 420 I.P.C. has been of late made compoundable. Therefore, it is submitted on behalf of the accused by Mr. Arun Bras De Sa that pending the compounding of the said offences the accused could be released on bail and if necessary with surety in the sum of Rs.2,00,000/-.

7. On the other hand, the learned Public Prosecutor Mr. C. A. Ferreira has pointed out, referring to the said fax message, that the accused was not deported but was intercepted as the accused was found fleeing the country on a Lativian Passport and the conduct of the accused is such that he has too many passports and if released on bail will not be available for trial.

8. I am unable to accept the submission of the learned Counsel Mr. Arun Bras De Sa to the effect that accused did not jump bail. The accused was intercepted at Mumbai whilst he was leaving the country on a Lativian Passport and it is in that process that the accused came to be intercepted and deported to

Germany. Nothing has been mentioned on behalf of the accused as to what the accused did for almost 2 years after his deportation to Germany and again being found at New Delhi on or about 5-2-2006. As already stated, the wife of the accused who had stood surety for the accused has already paid the amount of the bond due by her and this again reinforces the fact that the accused had jumped bail, and since he would not be otherwise available, that his wife paid the amount due on the bond and got herself discharged from the liability.

9. In other words, the accused having jumped bail once, it would not be advisable to release him on bail again. That apart the antecedents of the accused do not appear to be good. Apparently, the accused is a German National. On 17-12-2003 he was intercepted whilst he was trying to leave the country with a Lativian Passport and this is presumably because the German Passport of the accused was with the Foreigners Registration Officer at Panaji, as noted by the learned Sessions Judge. The accused came to India on 5-2-2006 on an Estonian Passport and in case the accused is now released there would be no guarantee that the accused will not leave the country on some

other passport. It is the traditional and rational to look to the antecedents and background of the accused whilst exercising bail discretion.

10. Considering the above, in my view, this is not a fit case to admit the accused on bail.

N. A. BRITTO, J.

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